



Sale Terms and Conditions

1. **Definitions.** In these Sale Terms and Conditions, the following definitions apply:
 - a. "Agreement" means the Sales Order Acknowledgment, Sale Terms and Conditions, and the Specifications (if any) between Company and Customer.
 - b. "Company" means Mil Spec, Inc.
 - c. "Company Proposal" means any acknowledgement, estimate, quote, offer to sell, invoice, or proposal of Company relating to the supply of Goods and/or Services to Customer, including any delivered in connection with a request for quotations, request for proposal or similar process initiated by Customer.
 - d. "Confidential Information" means any and all information, ideas, trade secrets, inventions, know-how, business plans, business practices, concepts, financial statements, client information, prospective client information, reports, data, project specifications, processes, rights and materials related to Buyer or to the business activities of Buyer, in each case whether tangible or intangible, whether in written, oral, chemical, magnetic, photographic, optical, or other form, in all stages of research and development, and whether now existing or supplied by or on behalf of Company or developed or created at any time; provided, however, "Confidential Information" shall not include information which: (i) is or becomes publicly available other than as a result of the disclosure by Customer or its representatives without Company's prior written consent, (ii) is or becomes available to Customer on a non-confidential basis from a third party who is not prohibited from disclosing such information, or (iii) is independently developed by Customer without reference to the Confidential Information.
 - e. "Customer" means the party indicated on the face page of the Sales Order Acknowledgment that is contracting with Company to purchase Goods and/or Services from Company.
 - f. "Deliverable" means any deliverable or other product or result from Services that is referred to in a Sales Order Acknowledgment, and any related materials, data, documentation, and includes any Intellectual Property Rights developed by Company pursuant to such Sales Order Acknowledgment.
 - g. "Delivery Date" means the date of delivery for Goods or performance of Services as specified in a Sales Order Acknowledgment.
 - h. "Delivery Point" means the location identified in the Sales Order Acknowledgment to which Company is to deliver Goods and/or perform the Services.
 - i. "Goods" means the goods that are required to be delivered by Company pursuant to a Sales Order Acknowledgment, and include all materials, component parts, packaging and labelling of such goods.
 - j. "Intellectual Property Rights" means all intellectual property rights and rights of a similar nature including but not limited to all rights in and to, patents including all issued patents and pending applications therefore and patents which may be issued therefrom (including divisions, reissues, re-examinations, continuations and continuations-in-part); trademarks; copyrights; industrial design rights; rights pertaining to trade secrets and confidential information; publicity rights; personality rights; moral rights; and other intellectual property rights whether registered or not

- and all applications, registrations, renewals and extensions pertaining to the foregoing.
- k. "Sales Order Acknowledgment" means the Sales Order Acknowledgment between Company and Customer for the sale of Goods or Services from Company to Customer, to which these Sale Terms and Conditions are incorporated by reference.
 - l. "Services" means any services to be provided by Company to Customer pursuant to the Agreement.
 - m. "Specifications" means the requirements, attributes and specifications for the Goods or Services that are set out in the Agreement (the Specifications may be incorporated in the Sales Order Acknowledgment or may be a separate document). Specifications also include: (a) documentation published by Company relating to the Goods or Services; (b) operational and technical features and functionality of the Goods or Services; (c) standards or levels of service performance for Services; and (d) Customer business requirements that are expressly set out in a Sales Order Acknowledgment.
 - n. "Warranty Period" means in respect of any Goods or Services, the express written warranty period provided by Company for the Goods or Services.
2. **Agreement.** The Agreement consists only of: (a) these Sale Terms and Conditions; (b) the applicable Sales Order Acknowledgment; and (c) any Specifications or other documents expressly referenced in the Sales Order Acknowledgment. Any reference in the Sales Order Acknowledgment to any Company Proposal is solely for the purpose of incorporating the descriptions and specifications of the Goods and/or Services contained in the Company Proposal, and only to the extent that the terms of the Company Proposal do not conflict with the descriptions and Specifications set out in the Sales Order Acknowledgment. If there is any conflict or inconsistency between the documents constituting the Agreement, then unless otherwise expressly provided, the documents will rank in the order of precedence as follows: (1) Sale Terms and Conditions, (2) applicable Sales Order Acknowledgment, and (3) Specifications.
3. **Delivery of Goods and Services.**
- a. Company agrees to supply and deliver the Goods to Customer and to perform the Services, as applicable, in accordance with the invoicing, delivery terms, shipping, packing, and other instructions on the Sales Order Acknowledgment.
 - b. Goods shall be delivered, and Services performed by the applicable Delivery Date. Company must promptly notify Customer if Company anticipates it may not meet a Delivery Date. No later than thirty (30) days prior to the Delivery Date, Customer may, upon notice to Company, request to cancel or change a Sales Order Acknowledgment, or any portion thereof, for any reason. Company shall accept or deny Customer's changes or cancellation to a Sales Order Acknowledgment within five (5) business days in writing.
 - c. Title and risk of loss or damage shall pass to Customer upon receipt of Goods at the Delivery Point, unless otherwise agreed to by the Customer in writing. Customer has no obligation to obtain insurance while Goods are in transit from Company to the Delivery Point.
4. **Inspection; Acceptance and Rejection.**
- a. All shipments of Goods and performance of Services shall be subject to Customer's right of inspection. Customer shall have fourteen (14) days (the "Inspection Period") following the delivery of the Goods at the Delivery Point or performance of the Services to undertake such inspection, and upon such inspection, Customer shall either accept the Goods or Services ("Acceptance") or reject them. Customer's right to reject

the Goods or Services shall be limited to Goods that are (1) delivered in excess of the quantity ordered, (2) are damaged or defective, or (3) are not in material conformance with the Specifications or any term of the Agreement. Customer shall provide Company within the Inspection Period notice of any Goods or Services that are rejected, together with the reasons for such rejection. If Customer does not provide Company with any notice of rejection within the Inspection Period, then Customer will be deemed to have accepted such Goods or Services. Customer's inspection, testing, or acceptance or use of the Goods or Services hereunder shall not limit or otherwise affect Company's warranty obligations hereunder with respect to the Goods or Services, and such warranties shall survive inspection, test, acceptance and use of the Goods or Services.

- b. If certain Goods are rejected by Customer, Customer may return such Goods (at Customer's expense and risk of loss), and Company may either: (i) give Customer full credit or refund of all amounts paid by Customer for the rejected Goods; or (ii) send replacement Goods to Customer within a reasonable time period.

5. **Price/Payment Terms.** Prices for the Goods and/or Services will be set out in the applicable Sales Order Acknowledgment. Price increases or charges not expressly set out in the Sales Order Acknowledgment shall not be effective unless prior written notice is provided to Customer. Company will issue invoices to Customer, and each invoice shall be paid within the time period set forth on the applicable Sales Order Acknowledgment (and if no time period is set forth on such Sales Order Acknowledgment, then within thirty (30) days of Customer's receipt of an invoice). Customer shall have the right to dispute any invoice amounts in good faith; provided, however, that Customer shall have no right to withhold payment of any invoiced amounts.

6. **Warranties**

- a. **Product Warranties.** Company warrants to Buyer that during the Goods Warranty Period all Goods provided hereunder shall be: (i) of merchantable quality; (ii) unless otherwise agreed to by Buyer, new; (iii) free from material defects in design, material and workmanship; (iv) in material compliance with the Specifications; (v) free from any liens or encumbrances on title whatsoever; and (vi) compliant with all applicable federal, provincial, and municipal laws, regulations, standards, and codes.
- b. **Service Warranties.** Company shall perform all Services: (i) exercising that degree of professionalism, skill, diligence, care, prudence, judgment, and integrity which would reasonably be expected from an experienced service provider; (ii) in accordance with all Specifications; and (iii) using only personnel with the skills, training, expertise, and qualifications necessary to carry out the Services.
- c. **Manufacturer Warranties.** Company shall assign to Customer all manufacturer's warranties for Goods not manufactured by Company and shall take all steps as required by such third-party manufacturers to effect assignment of such warranties to Customer upon Customer's request.

7. **Warranty Remedies.**

- a. In the event of breach of any of the warranties in Section 6 and as Customer's sole recourse and remedy for a warranty breach, Company will, at Company's expense and Customer's option, refund the purchase price for, or correct or replace the affected Goods, or re-perform the affected Services. Company shall have the right to inspect and investigate any suspected warranty breach. All associated costs, including costs of re-performance, costs to inspect the Goods and/or Services, transport the Goods from Company to Customer, and return shipment to Customer will be borne by

Company. If Goods are corrected or replaced or Services are re-performed, the warranties in Section 6 will continue as to the corrected or replaced Goods for a further Goods Warranty Period commencing on the date of acceptance of the corrected or replaced Goods by Customer.

8. **Intellectual Property Rights.** All Intellectual Property Rights in and to each Deliverable shall vest in Buyer free and clear of all liens and encumbrances on receipt of payment by Customer for each Deliverable. To the extent that any Deliverables contain any intellectual property of Company, Company hereby grants to Customer a worldwide, royalty-free, non-exclusive, perpetual license to use such intellectual property as part of the Deliverables.
9. **Confidentiality.** Customer acknowledges the confidential and proprietary nature of the Confidential Information which may be disclosed to Customer. Accordingly, Customer agrees to the following steps:
 - a. Customer will treat the Confidential Information in the strictest confidence and will not use, disclose, or otherwise permit any person or entity access to any of the Confidential Information other than as required in order to perform its obligations under the Agreement;
 - b. Customer will take all reasonable precautions to prevent disclosure of the Confidential Information to unauthorized persons or entities, including limiting disclosure to persons with a need to know who agree to observe the confidentiality obligations of the Agreement;
 - c. All Confidential Information remains the property of Company. Customer shall not obtain any rights in or to any Confidential Information disclosed to Customer as a result of such disclosure. Upon the receipt of Company's request at any time or the termination of the Agreement, Customer will promptly return or destroy (at Company's election) all tangible materials in its possession embodying the Confidential Information.
 - d. The provisions of this Section 10 shall survive the termination of the Agreement.
10. **Indemnities.**
 - a. Customer shall indemnify, defend and hold harmless Company, its affiliates, and their respective officers, directors, employees, consultants, and agents (the "Company Indemnified Parties") from and against any claims, fines, losses, actions, damages, expenses, legal fees and all other liabilities (collectively, "Losses") brought against or incurred by the Company Indemnified Parties or any of them arising out of Customer's breach of any of its obligations under this Agreement.
 - b. Company shall indemnify, defend and hold harmless Customer, its affiliates, and their respective officers, directors, employees, consultants, and agents (the "Customer Indemnified Parties") from and against any Losses brought against or incurred by the Customer Indemnified Parties or any of them arising out of Company's breach of any of its obligations under this Agreement.
11. **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING ANY LOST PROFITS, DATA, GOODWILL, OR BUSINESS OPPORTUNITY FOR ANY MATTER RELATING TO THE AGREEMENT.

12. Miscellaneous.

- a. **Independent Contractors.** Company will perform its obligations under the Agreement as an independent contractor and in no way will Company or its employees be considered employees, agents, partners, fiduciaries, or joint ventures of Customer.
- b. **Further Assurances.** The parties shall sign such further and other documents, cause such meetings to be held, resolutions passed and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.
- c. **Severability.** If any provision of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part thereof and all other provisions shall continue in full force and effect.
- d. **Waiver.** No waiver of any provision of this Agreement shall be enforceable against that party unless it is in writing and signed by that party.
- e. **Assignment.** Neither party may assign the Agreement, in whole or in part, without the other party's prior written consent. A party's consent to an assignment does not release the parties from their obligations under the Agreement, and the assigning party will remain jointly and severally liable with the assignee or subcontractor for any obligations assigned or subcontracted. The Agreement shall endure to the benefit of and be binding upon the parties and their respective legal personal representatives, heirs, executors, administrators, assigns or successors.
- f. **Survival.** Any provision of the Agreement which expressly or by implication from its nature is intended to survive the termination or completion of the Agreement will continue in full force and effect after any termination, expiry or completion of the Agreement.
- g. **Interpretation.** The headings used in the Agreement and its division into articles, sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders. References in the Agreement to articles, sections, schedules, exhibits, appendices, and other subdivisions are to those parts of the Agreement. Where the Agreement uses the word "including," it means "including without limitation," and where it uses the word "includes," it means "includes without limitation."
- h. **Governing Law.** The Agreement shall be governed by the laws of the State of Missouri, without regard to choice or conflict of laws rules. Any legal action or proceeding with respect to the Agreement or any document related hereto may be brought in the Courts of the County of St. Louis, State of Missouri, or any Court of the United States of America for the Eastern District of Missouri and, by execution and delivery of the Agreement, each party accepts for itself, generally and unconditionally, the jurisdiction of such courts. The parties irrevocably waive any objections, including any objection to the laying of venue or based on the grounds of forum non conveniens, which any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions.
- i. **Attorney's Fees and Costs-** In the event either party brings suit to construe or enforce the terms of the Agreement or raises the Agreement as a defense in a suit brought by Buyer or Customer, the prevailing party is entitled to recover its reasonable attorneys' fees and expenses.